IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10344 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M/S. SHREPAK ENTERPRISES

Versus

AHMEDABAD PEOPLE'S CO-OP. BANK LIMITED

Appearance:

1. Special Civil Application No. 10344 of 2001

MR MB GANDHI for Petitioner No. 1-6

MRS TRUSHA M GANDHI for Petitioner No. 1-6

MR MIHIR A LAKHIA for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 26/04/2002

ORAL JUDGEMENT

Rule. Mr.Lakhia appears for respondent waives service of rule. With the consent of parties matter is finally heard.

2. The present petition is filed by the petitioners against the award, dated 15.1.1994 passed by the Nominee in Lavad Suit No.1262/93 and the order dated 6.1.1998 passed by the Nominee for restoration of application and its confirmation by the Gujarat State Coop.Tribunal in Appeal No.47/98 as per order dated 28.9.01.

3. Mr.Gandhi for the petitioners submitted that it is true that the summons were served upon the petitioners but thereafter for the reasons beyond the control of the petitioners the petitioners could not remain present for defending the suit and the learned Nominee passed exparte judgment and award. Mr.Gandhi submitted that thereafter the restoration application was submitted by the petitioners who were defendants in the suit. However, the said restoration application came to be rejected as per order dated 6.1.1998. Mr.Gandhi further submitted that against the orders passed by the Nominee appeal was preferred before the Tribunal and as per order dated 28.9.01 said appeal came to be dismissed. Mr.Gandhi therefore submitted that since as per the petitioners since there is a substantial defence for the defendants to defend the suit the exparte judgment and award passed by the Nominee and its confirmation by the tribunal should be interfered with. Mr.Gandhi also submitted that the petitioners are ready and willing to abide by any terms and conditions which may be imposed by the Honourable Court to show their bonafides and for the purpose of remanding the matter to the learned Nominee for adjudication of the suit afresh. Mr.Gandhi also submitted that the petitioners are prepared to pay the costs of litigation on account of default committed by the petitioners in not defending the suit before the learned nominee, tribunal and also before this court. Mr.Gandhi has stated before this court that petitioners have already deposited the amount of Rs.1 lacs pursuant to interim orders passed by this court on 27.11.2001.

4. On behalf of respondents Mr.Lakhia submitted that the petitioners could have defended the suit but they have not availed of that because it has also come on record that the summons were served and thereafter the petitioners were aware that the suit proceedings were pending . Mr.Lakhia submitted that even subsequently the petitioners conducted the inquiry about the suit from the bank and it is submitted that the bank officers informed to the petitioners that the petitioners should not worry about the suit but continue to make payment.Therefore, Mr.Lakhia submitted that this shows that the petitioners

were aware of the pendency of the proceedings. However, ultimately, the petitioners did not participate in the suit proceediungs and once after award was passed, they had made application for restoration. Mr.Lakhia submitted that the Nominee has found that there is no case for restoration and the tribunal has confirmed the same and therefore this court should not interfere. Mr.Lakhia in the alternative submitted that even if the court finds that there is a case for remand, then the Honourable Court should put the petitioners to terms atleast to the extent of depositing the admitted liability. Mr.Lakhia submitted that the petitioners have filed rejoinder in which they have stated that as per their calculation the amount of Rs.689369/- is payable to the bank minus dividend not received and share certificates as submitted by the petitioners is that of Rs.522764/- and therefore Mr.Lakhia submitted that in any case the petitioners should be directed to deposit the said amount with the bank.

5. Considering the rival submissions of the parties and on perusal of the orders passed by the nominee as well as tribunal it appears that both the courts below have proceeded on the basis that though the summons were served and the petitioners have not filed any written statement and have not availed opportunity to defend the matter the restoration application deserves to be rejected and the tribunal also confirmed the same. Relevant reasons of the orders of the tribunal show that the tribunal has mainly rejected the revision application on the basis that the petitioners remained negligent in their own cause and after a long time they have tried to appear before the court and the said delay is not sufficiently explained. The tribunal has not examined the major aspects of the case as to whether there was any triable defence while considering the question of restoration application or not. In view of the fact that the defence of the petitioners is that they are liable to make payment of Rs.689369/- and as against the said amount of Rs.1736473.11 ps which is claimed by the bank and if the matter is not remanded back to the learned nominee it may result into gross injustice, more particularly, when substantial defence is raised. Therefore considering the overall facts and circumstances I am of the view that if the following directions are given it would meet with the ends of justice:

(i) That the petitioners shall deposit a sum of Rs.1 lac within one month from today and further amount of Rs.1 lac within two months thereafter with the respondent Bank.

(ii) That the petitioners shall also pay amount of costs incurred by the respondent Bank for the proceeding of suit before the Nominee and appeal before tribunal and the proceedings before this court. Said amount of costs which may be intimated by the bank to the petitioner shall be paid by the petitioner within one month from the date of intimation to the bank.

(iii) After the above two conditions are fulfilled and the amounts are deposited and paid as indicated above, the learned Nominee shall take up the suit afresh for trial and the respondent bank and the petitioners will have opportunity to putforward their case in accordance with law and the learned nominee shall decide the suit as early as possible and not later than the period of four months from moving of the application by either side and take up the suit for trial.

6. In view of the above directions, the order passed by the learned nominee dated 15.1.1994 in Lavad Suit No.1262/93 and the order dated 6.1.1998 in the application for restoration application No.219/96 and the order dated 28.9.01 passed by the tribunal in Appeal No.47/98 are hereby quashed and they stand modified as per the above directions.

7. Until the learned nominee decides the suit as directed earlier the interim injunction granted by the nominee in respect of the the orders which are mentioned on pages 18 & 19 of the compilation shall continue to operate.

8. It is clarified that if the amounts are not deposited and the costs are not paid as indicated earlier the directions for retrial of the suit shall not operate and it will be open for the bank to execute the award passed by the nominee in accordance with law.

9. The petition shall stand allowed to the aforesaid extent. Rule is made absolute accordingly.

26.4.2002 (JAYANT PATEL,J)